IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2154 OF 1999

1.The State of Maharashtra)
through the Secretary, Public)
Works Department, Mantralaya,)
Mumbai.)
2.The Secretary, General)
Administration Department,)
Mantralaya, Mumbai.)
3.Mr. Wani, the then Secretary)
Public Works Department now)
working as Member, M.P.S.C. (
Mumbai.)...Petitioners

Versus

Shri Gopal Ananda Nagargoje)
Superintending Engineer (Retired)
54, Ankur Apartments, Gulmohar)
Cross Road No.10, Juhu Scheme,)
Mumbai-400 049.)....Respondent

Mr. A.P. Vanarse, for the Petitioners
Mr.N.V.Bandiwadekar, for the Respondent.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 29th April,2005

ORAL JUDGMENT: (PER F.I. REBELLO, J.):

. The petitioner, State has challenged the order of Maharashtra Administrative Tribunal dated 27th November, 1998 in Original Application No.163 of 1998.

2. A few facts may be set out. It was the case of the Respondent that he was eligible for consideration to the promotional post of Chief Engineer as on 15th July, 1997. On that date the grievance of the respondent is that one Chavan was promoted. The petitioner challenged the said promotion by Original Application No.505 of 1997. The said application was allowed. The Tribunal directed the petitioner State to consider the suitability of the respondent for promotion to the post of Chief Engineer on the basis of relevant service

record and if suitable to be promoted to the post forthwith. Shri Chavan who was promoted to the post of Chief Engineer, according to the Counsel for the Respondent, retired on 31st July, 1997. The respondent was, therefore, eligible to be considered from 1st August, 1997. The order of Maharashtra Administrative Tribunal was challenged before this Court by Writ Petition No.841 of 1998. The petition was admitted, but no interim relief was granted.

3. As inspite of the order of MAT the respondent was not considered he filed Contempt Petition No.9 of 1998. In that proceedings the petitioner filed an affidavit to state that the respondent was considered and found not fit for promotion as Chief Engineer. That was communicated to the respondent by letter dated 26th February, 1998. The contempt petition came to be disposed of accordingly.

4. The respondent aggrieved by the order dated 26th February, 1998 which held the respondent unfit for promotion as Chief Engineer filed O.A. No.63 of 1998. The original application was opposed by the petitioners. The learned Members of the M.A.T. after taking into consideration the Government Resolution dated 7th January, 1961 was pleased to allow the Original Application. The learned Tribunal was pleased to record a finding of fact that the respondent's grading was B + 1. The learned Member then noted that if the Government Resolution of 7th January, 1961 had to be considered then in so far as backward class candidate is concerned, special sympathy had to be borne in mind at the time of promotion and promotion should not be denied to such Government Servants unless they are considered definitely

unfit for promotion or unless promotion is ordered by competent authority to be withheld as a measure of punishment, but ought to be given promotion to the higher post. The learned Tribunal held that considering this grading the respondent ought to have been marked atleast as "A" and in the light of that directed that promotion be given to the respondent as Chief Engineer as on 15th July, 1997. The Tribunal noted that respondent has retired on superannuation and he will be entitled to all consequential benefits accordingly. That order is the subject matter of the present writ petition.

5. The petition came to be admitted on 21st April, 1999. Interim relief was granted in terms of prayer clause (c) which was to stay the execution, operation and implementation of the order dated 27th November, 1998.

. At the hearing of this petition on behalf of the petitioner learned Counsel submits that the learned Member of the M.A.T. could not have changed the grading of the respondent from B + to "A" as that was not within the jurisdiction of the Tribunal and consequently the order is liable to be set aside. On the other hand on behalf of the respondent his learned Counsel submits that the Respondent could only have been denied promotion if he was unfit. In the instant case the petitioner was marked as B + which would not be unfit. Unfit had to be considered in respect of a candidate who would be average or below average. That being the case even if there be some error in the order of the learned Member of the Tribunal the ultimate order ought not to be interfered with.

6. There is some merit in the contention advanced on behalf of the petitioner State that the grading could not have been changed by MAT contrary to the record. If the respondent was held to be B + then the said grading could not have been changed unless it was the case of the Tribunal that the relevant documents had not been considered. In the instant case the finding of the MAT for upgrading, is based on the circular dated 7th January, 1961. That circular could not have been considered for the purpose of upgrading the respondent. To that extent the criticism of the petitioner against the judgment has merit.

7. The only question is whether on the facts on record otherwise the order need to be interfered with. We have the Government Resolution dated 7th January, 1961 whereby the Government of Maharashtra by its resolution granted concession to members of the backward class in the matter of promotion. The resolution noted that government servants belonging to backward classes should be judged with special sympathy and promotion should not be denied to such government servants unless they are considered definitely unfit for promotion or unless promotion is ordered by competent authority to be withheld as a measure of punishment. Further the Resolution notes that the special sympathy be shown in case of Government Servants belonging to backward class with regard to standards of efficiency. In respect of character and integrity the criteria of fitness should be applied with equal strictness to all Government servants, irrespective of whether or not the Government servant belongs to a backward class. It is not the case of the petitioner that the respondent was unfit on the ground of character and integrity. The Tribunal on the

contrary has recorded a finding of fact in favour of the respondent. If the G.R. of 7th January, 1961 is considered what that will mean is that if in the order of seniority there is a backward class candidate he ordinarily ought not to be by-passed with regard to the standards of efficiency unless he was unfit. The standard of efficiency normally will be the confidential report. In the instant case the petitioner was marked as B +. B + will be a high grading and definitely not a grading of a person who is unfit. In these circumstances the resolution of 7th January, 1961 could not be by-passed. No other resolution to the contrary has been pointed out. We are, therefore, of the considered opinion that in the ultimate analysis the impugned order of M.A.T. need not be interfered with.

8. We make it clear that in the event any other person between the period 31st July, 1997 and 28th February, 1998, which is the date on which the respondent retired, was appointed to the post of Chief Engineer then in that event the petitioners to create a supernumerary post for the petitioner to comply with the order of the Tribunal. If there was no person appointed then the order of the Tribunal will be given effect to in terms of the judgment. At any rate considering that the respondent has retired and about 8 years have passed since his retirement ends of justice will be met if the petitioners are directed to comply with the directions of MAT as modified by this Court within 3 months from today. In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)

(S.P. KUKDAY, J.)